

that the cost of the cathedral establishment and contingent charges amounts to Rs. 1,084, per mensem, and that the trustees of the cathedral object to any reduction being made, holding that under the trust deed they have an indefeasible right to claim from Government both establishment and contingent charges on the existing scale.

2. The Governor-General in Council does not admit that the trustees alone have the power to decide the question at issue, but His Excellency in Council does not desire to press the matter, and leaves it to be settled by the Bombay Government on the most favourable terms which may be found possible.

3. I am to add that a maximum grant of Rs. 400 per mensem has been fixed for the cathedrals at Calcutta and Madras.

*Finance Department Resolution No. 4016, dated Simla, the 9th November 1881.*

Read—

Office memorandum from the Military to the Home Department (Ecclesiastical), No. 1618-S. D., dated the 17th October 1881, proposing a general rule to regulate the incidence of charges on account of clerical and menial establishments for religious services in connection with the troops.

The undersigned is desired to acknowledge the receipt of the docket from the Home Department, No. 75, dated 5th May 1881, on the subject of the provision of a clerical and menial establishment for Presbyterian religious service in connection with troops. The case in point is that of the 72nd Highlanders.

2. In reply he is to forward the correspondence marginally noted, and to suggest that as (in regard to the general question) there would seem to be some doubt as to the proper incidence of charges on account of such establishment, the present opportunity be taken to settle the question finally.

From the Adjutant General in India, No. 2795-B., dated the 29th June 1881.

From the Controller of Military Accounts, Bengal, No. 10642.

3. The present rule as regards chaplains is understood to be as follows, viz:—

The Church of England chaplains and the church establishments are paid in the civil department, even though employed in a cantonment solely for the use of the troops.

The pay of the Roman Catholic chaplains and of the Chapel establishments engaged in the service of the troops is borne by the Military Department.

The pay of Presbyterian chaplains and of the church establishments at ordinary stations is borne by the civil department, but the pay of Presbyterian chaplains with Highland regiments is a military charge.

4. It seems, therefore, to the Military Department right that the charge on account of establishments for the church services of Highland regiments should also be a military charge, when the chaplain employed in the services is paid by the Military Department; and that in all other cases where there is a service performed for Presbyterian troops by a civil Presbyterian, Wesleyan or other chaplain, the charge for his services and any temporary establishment should be borne by the civil department.

5. The Military Department considers that the above would be a clearly defined rule which would prevent the mistakes which appear to have been made on more than one occasion in regard to the debit of such charges, and the undersigned is to recommend its adoption to the Home Department.

\* \* \* \* \*

RESOLUTION.—The rule proposed in paragraph 4 is sanctioned.

## APPENDIX B.

*Home Department Resolution Nos. 2—275 to 287 (Ecclesiastical), dated Simla, the 8th September 1875.*

Read the undermentioned correspondence relative to a proposed revision of the rules at present in force for the guidance of chaplains of the Church of England in regard to the burial of such persons as have laid violent hands upon themselves; and of those who having been members of the Roman Catholic church, have been refused burial by the priests of that church:—

From the Government of Fort St. George, No. 142, dated 12th June 1874, and No. 203, dated 28th August 1874.

To the Solicitor to Government, No. 327, dated 22nd September 1874.

From the Solicitor to Government No. 2316, dated 26th September 1874.

From the Lord Bishop of Calcutta, dated 13th January 1875.

RESOLUTION.—The first question was raised by the refusal of the Reverend C. H. Deane, Chaplain of Bangalore, to read the funeral service over a person who was found by a court of inquest to have committed suicide while in a state of temporary insanity.

\* To Mr. Knox, dated 2nd January 1874.

2. The subjoined letter\* from the Reverend C. H. Deane sets forth the ground of his refusal:

“When I answered your memorandum about the interment of the remains of the late Sergeant Spiers of the 18th Hussars, I was not aware that he had committed suicide. If, as I understand, there is no doubt that he poisoned himself, I regret to say that I shall not be able to officiate at his funeral. The Rubric before the burial service distinctly forbids it to be used for any that ‘have laid violent hands upon themselves,’ so that I have no option in the matter. The grave will be ready at 5 P.M., but no service can be used.”

† To the Chief Secretary to the Government of Fort St. George No. 483, dated 24th March 1874.

3. The view taken of the question by the Right Reverend the Bishop of Madras is stated in the subjoined letter.†

“I am directed by the Right Reverend the Bishop of Madras to acknowledge your communication of the 17th ultimo; forwarding copy of a letter from the Deputy Adjutant General, transmitting correspondence relative to the Reverend C. H. Deane’s refusal to read the funeral service over the late Sergeant Spiers, 18th Hussars, who committed suicide.

“2. In reply I am desired to state that Mr. Deane seems to have been requested to perform the funeral without having been furnished with the customary death report or any intimation that it was a case of suicide.

“3. The coroner’s warrant in itself appears to be ‘no more than a certificate that the body is not demanded by the law, and that therefore the relations may dispose of it as they please.’—(Wheatly on the Book of Common Prayer.) It does not, therefore, indicate the duty of a clergyman, or place him under legal obligation to give to a body Christian burial.

“4. In keeping with this view, the Government notification in *Fort St. George Gazette*, June 11th 1850, page 623, when it intimates that ‘the Reverend chaplains will in future consider the warrant of the coroner for the interment of a body on which an inquest has been held to be a sufficient authority for their performance of the burial service over it,’ adds, ‘if it would be their duty, under ordinary circumstances, to perform that service.’

“5. What is the duty of a clergyman when requested to bury a person who has committed suicide is to be ascertained partly from the Rubrics of our church, which are binding upon the clergy and have the force of law; and partly from the limitations of recognised legal commentators.

“6. The Rubric at the opening of ‘the order for the burial of the dead forbids a clergyman to use that service for any that have laid violent hands upon themselves.’

“7. In Burn’s ‘Ecclesiastical Law’ it is laid down: ‘Of this sort [suicide] are to be understood not all who have procured death unto themselves, but who

have done it voluntarily, and consequently have died in the commission of a mortal sin; and not idiots, lunatics, or persons otherwise of insane mind.'

"8. In the same book it is also stated that 'the proper judges whether persons who died of their own hands were out of their senses, are doubtless the coroner's jury.'

"9. In the case under consideration it appears that the Reverend Mr. Deane having regard only to the Rubric and *foro conscientiae* accounting himself responsible for the interpretation of it, refused to bury the corpse even when he knew that the coroner's jury had returned a verdict of 'temporary insanity.'

"10. In this refusal, I am instructed to state that Mr. Deane has not, so far as the Bishop can ascertain, violated any law, but he has departed from a recognised custom in not accepting the verdict of the coroner's jury as a justification for the using of the church's service over the remains of Sergeant Spiers.

"11. Mr. Cripps, in his 'Practical Treatise on the law relating to the Church and the Clergy' [Ed. 1869]\* states: 'No case appears ever to have occurred in which a clergyman who has refused to bury the corpse of one who has committed suicide in insanity has been punished by the Ecclesiastical Law.' At the same time he adds: 'It must be doubtful whether a departure from a custom of such acknowledged propriety would not be visited with ecclesiastical punishment.'

\* Page 793.

"12. In the absence of any court competent to visit with ecclesiastical punishment, the Bishop desires me to point out that it is very painful to a laborious and conscientious clergyman, such as Mr. Deane is, to deny the last offices of the church to one who has been under his spiritual charge, and it must, the Bishop thinks, be allowed that there was much in the circumstances of the present case to support the conclusion at which Mr. Deane arrived. I am, therefore, directed to say that His Lordship is disposed to take a lenient view of Mr. Deane's action, and the more so as those who are endeavouring to check the prevalence of intemperance in the army can ill-afford to lose any aid which a clergyman in the honest discharge of his duty can lawfully render."

4. The Government of Madras referred the whole correspondence for the information and orders of the Government of India.

5. The following brief statement of the English Law will be found sufficient for the present purpose:—By Common Law Christian persons are entitled to burial with the rites of the church. The Statutes passed from time to time for the uniformity of public worship have proceeded upon, though not expressly dealing with this state of things. The 68th of the Canons of 1603 recognises it and enjoins the clergy to act upon it. In that Canon occurs the exception of persons excommunicated for some grievous and notorious crime, and of whose repentance no testimony could be given. The Canons of 1603 are no part of the Statute Law, and it is only in a qualified sense that they are part of the law at all. But this Canon has been taken as truly expressing the ancient Common Law of the Church. The Books of Common Prayer have been embodied into the Statute Law by the various Acts of Uniformity, and Rubrics are authoritative guides when they speak on the question when the services are or are not to be used.

Down to the year 1661 there was no Rubric forbidding the performance of the burial service over any persons except persons excommunicated. The Rubric now in force was framed in the year 1661 and received the force of law from the Uniformity Act of 1662. It prescribes that "the office is not to be used for persons unbaptised or excommunicated, or who have laid violent hands on themselves."

7. The question now is whether the expression "have laid violent hands on themselves" includes all who have committed the overt act of suicide, or only those who have done so deliberately being in their sound senses and in a state in which moral responsibility attaches to them.

† Page 793.

8. In Mr. Cripps' † Treatise the following statement is made:—

The uniform practice, however, so far as it has been able to be ascertained is in accordance with the reasoning and opinion of Dr. Burn, and it must be doubtful whether a departure from a custom of such acknowledged propriety would not be visited with ecclesiastical punishment.



9. The opinion of Dr. Burn will be found in his work on Ecclesiastical Law, Volume I, page 265. After referring to the ancient Canon which forbade Christian burial to those who violently put themselves to death, and stating that this rule was understood to apply to those who did the act voluntarily, Dr. Burn intimates that the Rubric should not be construed as severer than the preceding Ecclesiastical Law, and therefore should not apply persons of insane mind.

10. In the year 1809, the Court of Arches, speaking of the treatment of suicides, put it on the ground that they are supposed to die in the commission of mortal sin, and to have renounced Christianity. *Kemp versus Wickes*, 3 Phillimore, pp. 272, 273.

11. The Government of India have not been referred to, and do not know of any authority for holding that the words of the Rubric apply to persons who are not responsible for their actions. It is certain that the practice has not been to apply these words in that way.

12. Under the circumstances the Governor-General in Council comes to the following conclusions:—

(a) It is reasonable in this matter to regulate the conduct of clergymen of the Church of England, who serve the Government of India, by the law and practice of the Church of England.

(b) There is no authority for holding that the Rubric under consideration applies to those who have caused their own death when in a state of mental insanity. For holding the contrary there is the authority of commentators and of judicial *dicta*. There is also the much greater authority derived from a usage which is very wide-spread and long continued, if indeed it is not quite unbroken. Testing the question by reason, it is only reasonable to hold that the framers of this Rubric did not intend as regards the burial of suicides to alter the law and practice that they found in existence or to visit with what must be considered as an ecclesiastical penalty, an act for which the doer is not responsible.

(c) Sincere respect is due to the scruples felt by conscientious men in performing a service of extreme solemnity. Nevertheless, it would not be reasonable that such scruples should prevail against the ancient law and practice of the Church of England which has been handed down to the present time, and which plainly authorises the use of the burial service over persons who have caused their own death while in a state of insanity.

“(d) *In such cases when the burial service is required to be read, the chaplain of the station should, at the time that his services are requisitioned, be furnished with a certificate under the hand of the District Magistrate, or in his absence the Magistrate of the next highest rank present, to the effect that he is satisfied that the deceased committed suicide while in a state of insanity. On receipt of such a certificate the chaplain will be bound to read the burial service.*”

13. The Governor-General in Council must therefore require from all clergymen connected with the Government their conformity to this ruling.

14. The next point for consideration is the rule requiring chaplains to read the funeral service over the bodies of persons who, having died in the profession of the Roman Catholic faith, have been refused burial by the priests of that church. It is stated by the Bishops of Calcutta and Madras that the clergy of the Church of England look upon the rule as bearing hardly upon them, and they desire to have it reconsidered.

15. This rule was laid down in the year 1855 under the belief that the case was governed by positive law, *viz.*, the 68th of the Canons of 1603. But on reconsideration of the matter the Governor-General in Council is of opinion—*1st*, that the Canon in question which is founded on the English parochial system cannot for the purpose now under consideration be applied to the very different circumstances of an Indian station; and *2ndly*, that even if it were applicable, it would

not prevent the Government from establishing a different rule of conduct for Indian chaplains if found expedient.

16. The Governor-General in Council further thinks that for the case now under review a different rule is expedient. The chaplain of an Indian station does not stand to the residents in the station in the relation which the person of an English parish bears to his parishioners. It was expressly so ruled by the Court of Directors in their despatch on this subject bearing date the 30th October 1844. Chaplains have been ordered to abstain from endeavours to influence the religious tenets of Roman Catholic soldiers, and in one case a chaplain was compelled to resign the service for persisting in such endeavours.

17. As regards the chaplains themselves, it does not seem consistent that they should be compelled to perform duties towards the corpse of a man whom when living they were forbidden to approach in any pastoral relation, and the Governor-General in Council admits that the dissatisfaction which the chaplains have felt with the order of 1855 rests on reasonable grounds.

18. As regards other persons, it can hardly be agreeable to the feelings of either Protestants or Roman Catholics that the chaplains should be called into supply a service which the priest has refused. To Protestants it must seem that in so acting their church is lax and careless about the performance of its solemn rites. To Roman Catholics it can hardly be otherwise than offensive that a stranger, who in their eyes has no authority, should effect to give to a member of their church what the recognized authority of that church has thought fit to withhold. And neither community can wish it on account of any advantage to the dead man; not Protestants, because the whole notion of such an advantage is contrary to their tenets; and not Roman Catholics, because they do not attribute any spiritual character to the chaplain.

19. For the above reasons the Governor-General in Council is pleased to revoke the order issued in the year 1855, and he will request the military authorities to make arrangements for the decent burial of Roman Catholic soldiers to whom the rites of their church have been refused by the priests.

*Home Department resolution (Ecclesiastical), No. 159, dated Simla, the 6th June 1877.*

Read again—

Home Department Resolution No. 275—287, dated the 8th September 1875, laying down certain rules for the guidance of chaplains of the Church of England in regard to the burial of suicides, etc.

Read also—

Office memorandum from the Military Department, No. 810, dated the 16th November 1875, forwarding, for an expression of opinion, a draft General Order which His Excellency the Commander-in-Chief proposes to issue on the subject in accordance with the above rules.

RESOLUTION.—On a reconsideration of the subject, the Government of India think it necessary to modify the rules contained in the resolution of 8th September 1875, so far as regards the burial of deceased Roman Catholics. The Government of India have now decided:—

*1st*, that at stations where there is a Roman Catholic priest drawing an allowance from Government, he shall be held bound to read the burial service over the body of every deceased Roman Catholic soldier brought for burial, unless he be excused from doing so by the Rubrics and Canons of the Roman Catholic church: and that when the Roman Catholic priest refuses to read the burial service over the body of a deceased Roman Catholic soldier, the military authorities shall make proper arrangements for the decent interment of the corpse;